IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.Rev.Pet.No. 1836 of 2005(D)

CC.338/2001 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY
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PETITIONER(S): DEFACTO COMPLAINANT

P.S.RAVINDRAN,
PERUMANATH HOUSE, B.K.PURAM P.O.,
PUTHENKURUZ (VIA), ERNAKULAM DISTRICT.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENT(S): ACCUSED & STATE
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1. **SUDHAKARAN S/O SANKARAN NAIR**
   PUNNETHUPUTHENPURA HOUSE,
   NEEHOOR KARA, MANEED VILLAGE,
   MUVATTUPUZHA.

2. **SAJEEV S/O. KUTTAPPAN NAIR,**
   THEKKEDATH HOUSE, CHEMMANAD KARA,
   THIRUVANIYOOR VILLAGE.

3. **RAJEEV S/O. KUTTAPPAN NAIR,**
   THEKKEDATH HOUSE, CHAMMANAD KARA,
   THIRUVANIYOOR VILLAGE.

4. **GOPI S/O. PALAN,**
   VALLUPARAMBIL HOUSE, NECHOOR KARA,
   MANEED VILLAGE, MUVATTUPUZHA.

5. **SOMANATH S/O. PRABHAKARA KURUPPU**
   CHAKKALAKUZHIYIL HOUSE, NECHOOR KARA,
   MANEED VILLAGE, MUVATTUPUZHA.

6. **ANIL KUMAR S/O. CHANDRASEKHARAN NAIR**
   PUTHUVATTU HOUSE, KAROOR KARA, MANEED VILLAGE,
   MUVATTUPUZHA.

tss

7. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI - 31.

R1 TO R6 BY ADVS. SRI.BENNY JOSEPH
SRI.S.RAJEEV.
R7 BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

K. HEMA, J.

CRL. R.P. No.1836 OF 2005

Dated this the 20th day of February, 2007.

O R D E R

This petition is filed against an order passed by the Magistrate's Court under Section 258 of the Code of Criminal Procedure, stopping the proceedings and releasing the accused, who are respondents herein.

2. A private complaint was filed by the revision petitioner before the Magistrate's Court alleging offences under Sections 465, 471 and 120(B) of Indian Penal Code against the respondents herein. It was forwarded for investigation under Section 156(3) of the Code. After investigation, charge sheet was laid for offences under Sections 465, 471 and 120(B) of IPC. The respondents filed a petition as C.M.P. No.252/2004 under Section 239 of the Code on the allegation that this is a falsely foisted case.

3. According to the respondents, the de facto complainant being a politician influenced the then police officials and managed to get the case charge-sheeted against them. Actually, the de facto complainant had executed an agreement in favour of the first accused and received an advance of Rs.1 lakh for the sale of a property belonging to him. Accused Nos.4 and 5 are the witnesses and 6th accused is the scribe of the document. It is alleged that the criminal conspiracy is hatched between the first, second and the third accused and all the accused allegedly forged the agreement for sale to make wrongful loss to the de facto complainant.

4. The respondents would contend that after executing an agreement for sale, when the de facto complainant committed breach of the contract, a suit was filed for specific performance before the Sub Court. On getting summons from the said court, a private complaint was filed making false allegations. Therefore, the proceedings are vexations and frivolous and the proceedings have to be stopped. Exts. D1 and D2 were marked on the side of the respondents.

5. Two documents were produced as Exts.D1 and D2, which are the decree and judgment in the suit, before the Sub Court in which the same contentions were raised with respect to the alleged forgery of the document. The Civil Court found that the document was not forged as per Ext.D2. Learned Magistrate found that the offences alleged are under Sections 465, 471 and 120(B) of IPC and the procedure for summons case is to be followed. Therefore, the accused cannot be discharged invoking Section 239 Cr.P.C. But, on considering the facts and circumstances, the trial court found that there is no reason to proceed with the case and hence proceedings were stopped and the accused were released under Section 258 Cr.P.C.

6. The main argument raised by the learned counsel appearing for the revision petitioner is that the court having found that the petition filed under Section 239 of the Code is not maintainable, the petition ought to have been dismissed. But, the court has wrongly invoked Section 258 of the Code and released the accused. This is an illegality, it is argued. It is true that if a petition is not maintainable, normally it has to be dismissed. But, at the

same time nothing prevents the Magistrate from invoking Section 258 suo-moto, if the court for reasons to be recorded finds that the proceedings have to be stopped and the accused have to be released. It is not necessary that an application should be filed for that purpose. Therefore, even though the petition under Section 239 is not maintainable, the Magistrate has not committed any illegality or impropriety in invoking powers under Section 258.

7. The learned Magistrate appears to be persuaded by the fact that the Civil court considered the dispute between the parties and passed a decree against the revision petitioner. It is not disputed that the very same allegations were made by the revision petitioner before the Civil court also that the agreement in respect of which the suit for specific performance was filed, was forged. The suit was a contested one and both sides adduced evidence and after considering the rival contentions the civil court passed a decree against the revision petitioner. An issue was raised in the suit whether defendant executed agreement for sale dated 05.04.2000, the alleged forged document which was marked as Ext.A1 in the said suit. It was found that the said document was executed by the de facto complainant. In such circumstance, it was only proper for the court to stop the proceedings.

8. It can also be seen from the records produced before the Criminal Court which are made available to me by the counsel at the time of hearing that there is no sufficient materials collected in investigation to support the case of forgery. It is also pertinent to note that there is only a bare allegation that the forgery was committed without any specific details as to

who committed the forgery, on which date, at which place etc. A vague allegation that all the accused conspired and committed forgery is not enough for a Criminal Court to proceed against an accused.

9. At least the probable date on which the forgery is committed, the person or persons who has forged the document etc. have to be disclosed in the investigation. But, the charge-sheet laid by the investigating officer does not disclose those details. The details available before the court are too insufficient so as to make out various offences alleged against the accused. The particulars of offences alleged must necessarily include the date of commission of offence, the place of commission of offence, the person who allegedly committed the forgery etc. But these details are not available.

10. It is also to be noted that the alleged agreement for sale is dated 05.04.2000 and the suit was filed on 03.07.2000 and the complaint was filed only on 26.07.2000. If, as a matter of fact, there was a genuine case of forgery, there is no reason why the complainant did not approach the police earlier. As per the allegations in the complaint, there is nothing to show that any complaint was filed before the police. The de facto complainant approached the court directly with a request to forward it under Section 156(3) Cr.P.C. for investigation. The complainant has no case that any petition filed by him was not entertained by the police or that they are refusing to register a crime. The complainant has not even made any complaint before the police.

Taking all these facts into consideration, I find that the belated

complaint which is filed before the Magistrate's Court would also tell upon the bonafides in the complaint. Looking at the case from many angle, I find that the court below has rightly invoked Section 258 Cr.P.C and stopped the proceedings and released the accused.

This petition is dismissed.

K. HEMA, JUDGE

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